

(2012) 08 NCDRC CK 0099

In the National Consumer Disputes Redressal Commission

A Asaithambi

APPELLANT

Vs

V. Kannan , Aishwarya , Company Secretary , V. Seetha

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Citation : 2012 0 NCDRC 424 : 2012 4 CPJ 213

Hon'ble Judges : J.M.Malik , Vinay Kumar J.

Advocate : V.Prabhakar

Judgement

1. THE State Commission while accepting the appeal arising out of order of District Forum held that since the petitioner was not a consumer, the complaint filed by him was not maintainable. Aggrieved by that order, the present revision petition has been filed. There is a delay of 114 days.

2. FIRST of all, we decide the question of limitation. The pleas set up in the application for condonation of delay shortly stated are these. After receipt of certified copy on 30.11.2011, the petitioner could not go over to Chennai immediately. He went to Chennai on 20.12.2011. No reason has been given why there was a delay of 20 days. His advocate wanted to study the papers at Chennai. He gave the opinion on 26.1.2012. The petitioner did not have any contact in Delhi. He got the address of counsel at Delhi only on 20.2.2012. The papers were sent in March, 2012. The Advocate at Delhi wanted clarifications which were received in the second week of March, 2012. Thereafter the revision petition was filed. The record reveals that there is delay of 114 days. The learned counsel for the petitioner vehemently argued that due to mistake on the part of the counsel delay should be condoned.

3. THE above said pleadings clearly go to show that there was no genuine mistake on the part of the advocate. The names of the advocates were also withheld. The litigant is supposed to be vigilant and should have filed the appeal within time. Why an advocate should take 114 days in order to give advice in such like small cases. He should have given the advice in a jiffy. The case of the petitioner is clearly barred by time and is supported by the authorities reported

in Anshul Aggarwal v. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC); R. B. Ramlingam V. R. B. Bhavaneshwari I(2009) CLT 188(SC); Ram Lal and Others v. Rewa Coalfields Ltd., AIR 1962 Supreme Court 361; Sow Kamalabai, W/o Narasaiyya Shrimal and Narsaiyya, S/o Sayanna Shrimal Vs. Ganpat Vithalroa Gavare, 2007 (1) Mh. LJ 807; Banshi Vs. Lakshmi Narain 1993(1) R.L.R. 68.

4. NOW, we turn to the merits of this case. Learned counsel for the petitioner vehemently argued that the view taken by the State Commission is incorrect. He has also drawn our attention towards Morgan Stanley Mutual Fund vs. Kartick Das (1994) 4 SCC 225, which was relied upon by the State Commission. He contended that as per paras 26 and 27, the view taken by the State Commission is incorrect. However, in paras 33, 34, 35, it was held :- "33. Certainly, clauses (iii) and (iv) of Section 2(1)(c) of the Act do not arise in this case. Therefore, what requires to be examined is, whether any unfair trade practice has been adopted. The expression "unfair trade practice" as per rules shall have the same meaning as defined under Section 36-A of Monopolies and Restrictive Trade Practices Act, 1969. That again cannot apply because the company is not trading in shares. The share means a share in the capital. The object of issuing the same is for building up capital. To raise capital, means making arrangements for carrying on the trade. It is not a practice relating to the carrying of any trade. Creation of share capital without allotment of shares does not bring shares into existence. Therefore, our answer is that a prospective investor like the respondent or the association is not a consumer under the Act. 34. From the above discussion, it is clear that the question of the appellant company trading in shares does not arise. 35. In view of our answers to questions 1 and 2, it follows that the Consumer Disputes Redressal Forum has no jurisdiction whatsoever."

5. IN addition, in the complaint itself, it was averred that "III. I. The 1st complainant herein submits that he is a businessman and residing at the above address. The 2nd complainant is a consumer Protection Organization espousing the grievance of Consumers in Cuddalore District within the jurisdiction of this Hon"ble forum."

6. THERE was no other pleading. Learned counsel for the petitioner also admitted this fact.

7. THERE is no whisper, word or syllable in respect of this crucial issue. The learned Counsel for the Complainant refrained from arguing this point of utmost importance, occurring in explanation appended to Section 2(1) (d) of the Consumer Protection Act, 1986.

8. WE are of the considered view that the complainant is not a consumer for the following reasons. Section 2 (1) (d) of Consumer Protection Act, 1986, defines the word "consumer", as follows :- "2 (1) (d) - "consumer" means any person who, -- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment

and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promise, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose". [Explanation- For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment"].

9. THE complainant has nowhere pleaded in the complaint that he is dealing with shares business as "self-employment" for livelihood. Nor it has been alleged that the services provided by respondents were being availed of exclusively for the purpose of his "livelihood", by means of "self-employment", by the complainant. It must be borne in mind that disputes between the parties relating to commercial purposes are excluded under the Act. This view stands fortified by a recent authority of this Commission, reported in *Vijay Kumar Vs. Indusind Bank*, II 2012 CPJ 181 (NC).

10. AGAIN, such like question arose for consideration before National Commission in case of *Som Nath Jain Vs. R.C. Goenka and Anr*, reported in 1 (1994) CPJ 27 (NC). In that case, dealing with sale purchase of shares, National Commission expressed serious doubt whether the complaint qua it would be maintainable under the Consumer Protection Act. Because, qua such transactions, elaborate evidence need to be taken regarding purchase and sale of shares, their prevalent price in the market and evidence regarding passing of instructions by client to the broker. Resultantly, the complainants were relegated to get the dispute decided through civil court.

11. WEST Bengal State Consumer Disputes Redressal Commission, Kolkata, in case *Ramendra Nath Basu Vs. Sanjeev Kapoor and Anr.*, reported in 1 (2009) CPJ 316 qua share trading has held that transactions between parties do not come under purview of Consumer Protection Act, 1986.

12. SIMILAR view was taken by the Delhi State Consumer Disputes Redressal Commission, New Delhi in case *Anand Prakash Vs. A.M. Johri and Ors.*, reported in III (2000) CPJ 291, by holding that sale purchase of shares are commercial transactions, so, complainant is not a "consumer" in such cases.

13. FOR the above said reasons, we see no merit in the revision petition and the same is therefore dismissed.